

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Granite Telecommunications, LLC/Qwest Corporation
Local Services Platform Agreement
Application

Case No. PU-07-29

STAFF RESPONSE TO QWEST CORPORATION'S APPLICATION FOR TRADE SECRET PROTECTION

On October 11, 2006 Qwest Corporation, (Qwest) filed an application for a trade secret protective order under North Dakota Administrative Code section 69-02-09-01 for protecting against public disclosure trade secret information as defined by North Dakota Century Code section 47-25.1-01(4). Qwest provided the following to support its application:

1. General description of the nature of the information sought to be protected.

Qwest seeks to protect the trade secret information included in the Qwest Local Services Platform Agreement between Qwest and Granite Telecommunications, LLC (Granite). Qwest states that the agreement contains confidential terms.

2. Explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons.

Qwest states that the information contains confidential and proprietary information regarding details of an agreement between Qwest and Granite. Qwest states that competitors with access to this information could use it to make strategies

and tactical decisions that could be harmful to the success and profitability of Qwest. Qwest further states that release of this information to competitors would unfairly enable them to make strategic and tactical decisions that would be harmful to the success and profitability of Qwest.

3. An Explanation of why the information is not readily ascertainable by proper means by other persons.

Qwest states that the confidentiality of the information has been maintained by the company and Granite and is only available to those employees who need to know the information to perform their duties and responsibilities.

4. A general description of the persons or entities that would obtain economic value from disclosure or use of the information.

Qwest states that competitors or potential competitors of Qwest that provide local exchange service and other telecommunications service would obtain economic value from disclosure of this information.

5. A specific description of known competitors and competitors' goods and services that is pertinent to the tariff or rate filing.

Competitors and potential competitors of Qwest in North Dakota include AT&T Communications of the Midwest, Inc., McLeodUSA Telecommunications Services, Inc., MCI metro Access Transmission Services, LLC, Sprint Communications Company L.P., Excel Telecommunications, Inc., and any other provider of telecommunications services in North Dakota or any of the other states in which Qwest operates.

6. A description of the efforts used to maintain the secrecy of the information.

Qwest refers to its responses to number 3.

Staff Review

Staff has reviewed Qwest's request for trade secret protection. North Dakota Century Code section 47-25.1-01(4) defines the term "trade secret" as follows:

"Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- a. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

The definition of "trade secret" under North Dakota Century Code section 44-04-18.4(2)(d), which is almost identical to North Dakota Century Code section 47-25.1-01(4), reads:

"Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, *technical know how*, or process, that:

1. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons that can obtain economic value from its disclosure or use; and
2. Is the subject of efforts that are reasonable under the circumstances to maintain *the secrecy of the information*. (Differences italicized).

North Dakota Administrative Code section 69-02-09-04 requires that the "commission staff examine the information and application and make a *prima facie* recommendation of whether the information is relevant and a trade secret under the definition of trade secret in North Dakota Century Code section 47-25.1-01."

The information is relevant to the application because the information is included in the settlement agreement between the parties. Competitors could use the information for which trade secret protection is requested against Qwest.

Staff believes that Qwest's application satisfies the requirements of North Dakota Century Code section 47-25.1-01 that allows the Commission to grant trade secret protection in this proceeding. The Commission's process provides a means for interested parties to review trade secret documents upon signing a nondisclosure agreement.

For reasons set forth above, staff recommends that the Commission grant Qwest's Application Requesting Trade Secret Protection in this case.

Dated this 15 day of February, 2009.



Annette Bendish
Staff Counsel